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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 61

INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, R. K. DOUD, S. V. CORNSTUBBLE, O. L. BROOM, C. R. CASEY, P. R. DAVIS, and E. E. FUQUA, *Petitioners*,

vs.

CENTRAL AIRLINES, INC., *Respondent*.

On Writ of Certiorari to the United States Court of Appeals for the Fift Circuit

RESPONDENT'S PETITION FOR REHEARING

MUELLER & MUELLER
Burk Burnett Building
Fort Worth 2, Texas
HUDSON, KELTNER, JORDAN, SMITH & CUNNINGHAM
Continental Life Building
Fort Worth 2, Texas
Attorneys for Respondent

Fort Worth Brief Printing Co., 610 S. Jennings Street Phone ED 2-4070

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RESPONDENT'S PETITION FOR REHEARING

Central Airlines, Inc., respondent herein, hereby respectfully petitions the Court to grant a rehearing herein for the following reasons:

1.

The opinion of the Court is so written as to give rise and support to the interpretation that federal jurisdiction in the case at bar is exclusive. Respondent is confident that such was not the intention or purpose of the Court. This is based upon respondent's intimate acquaintance with the submission of the case on briefs and oral argument.

Granting federal jurisdiction as the Court has held,

it follows that such jurisdiction is concurrent with that of the state courts. *Teamsters Union vs. Lucas Flour Co.*, 369 U.S. 95, 7 L.Ed. 2d 593; *Doud Box Co. vs. Courtney*, 368 U.S. 502, 7 L.Ed. 2d 483.

The Court appears to have recognized the existence of such concurrent jurisdiction by drawing, (as it does at page 10 of the slip opinion) a parallel to award cases arising under Section 301 of the Labor Management Relations Act, 1947. (29 USCA Sec. 185) Although respondent believes this to be true, it is doubtful in the context of the entire opinion that either a state or federal trial court would so construe the opinion. Little, if any imagination is required to envision a trial court saying that if the Supreme Court meant to hold that there was concurrent jurisdiction it knew how to say so and it would have done so.

In the course of oral argument, counsel for petitioners, in response to a question from the bench, conceded, as indeed one must, that if the federal courts have jurisdiction it is concurrent with the jurisdiction of the courts of the state and not exclusive. This, of course, is not reflected in the record of the case so as to aid in the interpretation of the Court's opinion in applying it to the instant case in the trial court or in the state court in which an action to set aside the award was first filed and is still pending awaiting trial. With the court's opinion in its present posture, it is doubtful that petitioners will again concede state court jurisdiction.

In any event, respondent respectfully submits that

the correct interpretation of the opinion of the court, i.e. that there is concurrent jurisdiction of federal and state courts, should be made to appear clearly on the face of the opinion and not left to speculation and argument or made to rest or depend upon admissions and statements of counsel. Absent clarification, it is probable that litigation will result concerning the meaning and proper interpretation of the court's opinion and holding in the present case as well as in other like or analogous situations. This can and should be obviated by the clarification sought hereby.

2.

The opinion goes outside and beyond the sole issue presented for decision, namely, whether or not the Federal District Court had jurisdiction to entertain and decide the suit brought therein by petitioners. The District Court dismissed the suit for want of jurisdiction in advance of any hearing or trial on the merits. It was in respect to this action by the District Court that the instant appeal was prosecuted.

In consequence, the sole "Question Presented" as stated by petitioners in their brief was,

> Whether a suit to enforce an award of an airline system board of adjustment, created by requirement of the Railway Labor Act, presents a federal question that confers jurisdiction on a United States District Court. (at page 2)

In its reply brief, respondent stated the question as follows:

> Whether a suit by an individual airline employee

> to enforce an award by an airline system board of adjustment is one which arises under the Constitution, laws and treaties of the United States. (at page 2)

Thus, petitioners and respondent agreed that federal jurisdiction was the only issue presented. This was the only question that was briefed and argued to the court and the only one that was before the court for decision.

Respondent respectfully submits that the opinion clearly goes outside and beyond that issue and contains statements and expressions in respect to other matters, such as the finality of the award of a system board, which were not before the court on brief, argument or otherwise and which are not related or necessary to a decision of the jurisdictional question.

With all deference, respondent suggests that such extraneous statements and expressions are likely improperly to affect and interfere with the trial and disposition of the case in the courts below. Respondent therefor respectfully petitions the Court to remove from its opinion all such expressions and statements so as to confine the opinion to the single issue of jurisdiction or, in the alternative, to make clear in the opinion that such statements and expressions are at most dicta.

Conclusion

For these reasons, respondent petitions the Court to grant a rehearing and thereupon to modify and amend the opinion in accordance with the foregoing.

Respectfully submitted,

HUDSON, KELTNER, JORDAN, SMITH & CUNNINGHAM
Continental Life Building
Fort Worth 2, Texas

MUELLER & MUELLER

By .....
Karl H. Mueller
Burk Burnett Bldg.
Fort Worth 2, Texas
Attorneys for Respondent

CERTIFICATE OF COUNSEL

I, Karl H. Mueller, an attorney for respondent and a member of the bar of the Supreme Court of the United States, hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

.....
Karl H. Mueller
Attorney for Respondent

May 7, 1963

CERTIFICATE OF SERVICE

Copies of this petition for rehearing have been mailed to the attorneys for the petitioners, on the same date that same were mailed to the Clerk of this Court, by mailing one copy thereof to each of the petitioners' attorneys, addressed as follows: Plato E. Papps, 1300 Connecticut Avenue, N.W., Washington 6, D.C.; Charles J. Morris, 1601 National Bankers Life Building, Dallas 1, Texas; Bernard Dunau, 912 Dupont Circle Building, Washington 6, D.C. Also, two copies have been mailed to the attorneys for amicus curiae, addressed to Samuel J. Cohen, 50 East 42nd Street, New York 17, New York.

May 7, 1963